(1)
Supreme Court, U.S.
FILED
96 224 AUG 7 1996
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1996

RONA V. FINIZIE

v.

THE CITY OF BRIDGEPORT, CONNECTICUT

Respondent.

ON PETITION FOR CERTIFICATION TO THE SUPREME COURT OF CONNECTICUT

PETITION FOR WRIT OF CERTIORARI

Rona V. Finizie
2440 North Venue
Bridgeport, CT 06604
(203) 335-0436
PETITIONER PRO SE

July 31, 1996

69pp

QUESTIONS PRESENTED

1. DID THE TRIAL COURT ERR AND ABUSE JUDICIAL DISCRETION BY FAILING TO PROVIDE TO THE APPELLANT THE OPPORTUNITY TO HAVE A FULL AND FAIR HEARING ON HER OBJECTION TO THE APPELLEE'S MOTION AND VIOLATE HER RIGHT TO DUE PROCESS GUARANTEED TO HER UNDER THE UNITED STATES CONSTITUTION AND UNDER THE CONSTITUTION OF THE STATE OF CONNECTICUT?

2. DID THE TRIAL COURT ERR AND ABUSE JUDICIAL DISCRETION WHEN IT DENIED THE APPELLANT'S MOTION TO RE-ARGUE, WHEN IN TRUTH THE GRANTING OF THE MOTION WOULD HAVE ALLOWED THE APPELLANT TO HAVE HER FIRST FULL AND FAIR OPPORTUNITY TO ARGUE HER OPPOSITION TO THE APPELLEE'S MOTION FOR STRICT FORECLOSURE AND TERMINATION OF STAY?

3. DID THE TRIAL COURT ERR AND ABUSE JUDICIAL DISCRETION ON AUGUST 7, 1995 IN PROCEEDING WITH A HEARING WHEN THE JUDGE HAD ALREADY ACKNOWLEDGED THAT THE APPELLANT WAS ILL AND THE APPELLANT WAS FORCED BY HER

ILLNESS TO LEAVE THE COURTROOM?

4. DID THE TRIAL COURT ERR AND ABUSE JUDICIAL DISCRETION WHEN THE JUDGE DID NOT INQUIRE INTO THE APPELLANT'S CHARGES OF FRAUD UPON THE COURT AND UNCLEAN HANDS WHEN BECAUSE OF HER ILLNESS AND HER NEED TO LEAVE THE COURTROOM THE APPELLANT WAS UNABLE TO ELABORATE ON THEM?

5. DID THE TRIAL COURT ERR AND ABUSE JUDICIAL DISCRETION WHEN THE JUDGE PROCEEDED TO JUDGMENT DURING THE APPELLANT'S ILLNESS-FORCED ABSENCE BY NOT REVIEWING AND STUDYING THE APPELLANT'S WRITTEN OBJECTION TO THE APPELLEE'S MOTIONS ALTHOUGH HE HAD ACKNOWLEDGED EARLIER IN THE PROCEEDING THAT HE KNEW NOTHING ABOUT THE MATTER?

6. SUCH OTHER ISSUES AS MAY BE DETERMINED AFTER STUDYING THE TRANSCRIPTS OF THE TRANSCRIPTS OF THE TRIALS.

PARTY TO THE PROCEEDINGS

PETITIONER:

RONA V. FINIZIE, PRO SE

ANN V. FINIZIE, ESTATE OF

LYONEL T. FINIZIE

EDMOND J. FINIZIE

RESPONDENT:

CITY OF BRIDGEPORT, CONNECTICUT;

RICHARD S. SCALO, ESQUIRE,

COUNSEL, CITY OF BRIDGEPORT;

RONALD D. JAPHA, ESQUIRE,

COUNSEL, CITY OF BRIDGEPORT;

GORDON AND SCALO, PC,

COUNSEL, CITY OF BRIDGEPORT.

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A. Order of Judge R. J. Tobin dated August 7, 1995 . . . . . .A1

B. Memorandum of Decision of Trial Court Judge Stodolink a) denying Defendant's Motion to repoen judgment for purposes of recognizing 4 special defenses previously entered, and b) granting Plaintiff Motion to reopen judgment and for strict foreclosure, dated March 31, 1993 . . . . . .B1

C. Order of Superior Court dated October 13, 1995 (2440 North Avenue) . . .C1

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H'. Order of Supreme Court dated
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I'. Order of Supreme Court dated
July 17, 1996 . . . . . I'1

OPINIONS DELIVERED BY OTHER COURTS

There were no Opinions delivered by other Courts, not even in the Appellate Court.

The only Opinion during this twelve year period was expressed by the initial Trial Court Judge in his Memorandum of Decision dated March 30, 1993, after both sides moved to Reopen Judgment in late 1992. (See Appendix for text of this Opinion.)

STATEMENT OF THE GROUNDS FOR JURISDICTION

i. The date of entry of order sought to be reviewed is May 2, 1996. Court denied petition for certification for review to Connecticut Supreme Court.

ii. Date of order denying rehearing of judgment of August 7, 1995 dated October 13, 1995.

iii. Motion for extension of time within which to file the petition for a writ of certiorari denied June 2, 1996.

iv. Motion for reconsideration and articulation of denial of motion for extension of time denied as to reconsideration and dismissed as to articulation July 17, 1996.

v. The statutory provision believed to confer on the United States Supreme Court jurisdiction to review the judgment and decree in question is Title 28 Section 1257 of the United States Code as quoted below:

"Final judgment or decrees rendered by the highest court of a state in which a decision could be had may be reviewed by the Supreme Court by a writ of certiorari.....where any title, rights, privilege, or immunity is claimed under the Constitution."

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on pa presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject to the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for federal use, without just compensation.

Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein

they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

This case has its genesis in the denial to the petitioner of her procedural due process rights by the City of Bridgeport Connecticut in an attempt by the City of Bridgeport to illegally, unethically, and unconstitutionally deprive her of her property. The petitioner has waged a twelve year struggle to prevent the confiscation of her property.

Throughout her struggle, she has encountered unethical and probably illegal conduct on the part of her opposition. Her own attorneys with the exception of one, have not acted in her best interests.

Her experience with the judicial system is one which has caused her to lose faith in the judicial system and has disabused her of the trust that was inculcated in her in her long-ago civics

class. She has been subjected to the arrogance of the courts; judged by a judge who should have disqualified himself, and in the present matter been the victim of an horrific abuse of discretion.

At an important hearing she had become ill, had informed the judge of her condition and her inability to proceed and although she begged for consideration, the judge demanded that she proceed. Even when the petitioner was forced by her condition to leave the court room to seek medical attention, the judge continued the hearing, ruling against her—not having heard her defense; not having considered or inquired into the petitioner's charges of unclean hands and fraud upon the court; and not having considered her written objection.

The Petitioner provides the Court with a

concise statement of the case.

This matter involves two contiguous pieces of property in total area, suitable for development as the site of a large apartment house in a prime residential area, and the City of Bridgeport's attempt to seize the property by unethical means, in violation of the Petitioner's constitutional right of procedural due process.

The case evolved from a Probate matter after Petitioner's mother died intestate in 1975. The Probate Court appointed her administratrix of her Mother's estate. When she became ill in 1979, she was replaced, at her brother's request, by a person of no inherent interest in the matter. The new Administrator petitioned for Partition and Sale, and his petition was granted by Trial Court Judge Stodolink. The Petitioner appealed this judgment to the

Appellate Court of Connecticut.

When her siblings claiming to be heirs did not pay their share of real estate taxes, the taxes became delinquent. On counsel of her attorney who told her that she had paid more than her share of taxes, she conferred with the City Tax Clerk who was a co-worker and with his concurrence, stopped payment of taxes. However, a few years later, when a general municipal policy for clearing up tax delinquencies was announced, she decided to take part in the program. She was denied the right to participate in the plan.

Within a month, acting through counsel unauthorized by the City Charter, the City instituted an action for foreclosure. That action was eventually dismissed for failure to prosecute diligently in December of 1985.

In March of 1986, the newly appoint-

ed Tax Attorney, (charter mandated and salaried), won a motion to Reopen, but did not move forward with the case.

In May of 1986, the Appellate Court overturned Judge Stodolink's decision in the matter of the Partition and Sale and criticized the court in its decision.

Finally, in September 1986, a member of the Tax Attorney's private firm took over the case and filed a motion to disqualify Petitioner's attorney, claiming the appearance of possible conflict of interest, even though the identical situation existed with other attorneys, and still does today.

Judge Stodolink was sitting again. He granted the motion to disqualify her attorney. The petitioner was forced to go "Pro Se." She fumbled along, losing decisions, but finally managed to secure the services in February 1987 of an attorney recommended as a specialist in

how to avoid foreclosures.

On March 25, 1987, the new attorney held a three hour conference with opposing counsel in the hallways of the Court. The Petitioner was not party to the conference. She was not told any specifics, nor did she make or sign any agreement regarding her property.

Months later, Petitioner discovered in the court file a document, defective on its face, purporting to be a judgment regarding the disposition of the property. It required sale of the property, and stated that the Petitioner had stipulated to the terms.

This was the first that the Petitioner learned any "agreement" had been made. The Petitioner had not seen and had not signed any agreement.

Shocked and befuddled, and lacking confidence in herself, Petitioner decided to continue to rely on her attorney,

believing that this was a legal tactic.

It was not until March 1988 that she realized the full import of what had happened and the precarious position that she was in.

As the time drew near for the fulfillment of the "Agreement," she grew desperate trying to stop the sale of her property. A State Legislator advised her that she could file for Bankruptcy and stop the sale. She did.

The Trustee appointed by the Court demanded that she hire an attorney to handle the proceedings, because he believed that she could not handle the complexities of Bankruptcy by herself.

Thoroughly unnerved by her experiences in Court, and although now somewhat distrustful of attorneys, she did retain a lawyer, a bankruptcy specialist, who came highly recommended as to competency and trustworthiness.

Her new attorney filed many papers of which she had no knowledge. The Petitioner's requested explanations were unsatisfactory and unclear. However, when she discovered that he was trying to sell her home rather than the contiguous unimproved lot, she dismissed him and immediately hired new counsel to clear up the mess.

Petitioner's new attorney challenged the purported stipulation by affidavit. The City replied by producing a document purporting to be a transcript of a hearing of March 25, 1987 which never occurred. The petitioner immediately requested to hear the tape of the hearing but the "tape" was and continues to be lost.

The City moved for dismissal of Petitioner's Bankruptcy case in Spring 1992, and it was granted in September 1992, because the Judge declared the

Petitioner was bound by the actions of her previous bankruptcy attorney. The City moved to reopen foreclosure of her property.

Judge Stodolink, the initial Trial Court Judge, was sitting again on this case. The Petitioner objected to the City's Motion on the grounds that there never had been a stipulation and charged that the transcript offered as proof of the stipulation was uncorroborated and the transcript was a fraud.

After having ignored her two requests to give testimony, which should have been permitted in order to have a fair trial, the Judge ruled against the Petitioner.

In his Memorandum of Decision (See Appendix) he criticized the Petitioner for lack of corroboration, while refusing to permit her to testify. He also made assessments as to her character,

integrity, behavior and competency in law, based solely on information in the Court file.

At the same time, Judge Stodolink accepted the transcript as valid, even though the transcript was uncorroborated and its genuineness had been challenged in the Federal Bankruptcy Court.

Once again the Petitioner filed for Chapter 13 protection in the Federal Bankruptcy Court.

The Plaintiff City continued to press for foreclosure. Even though the Petitioner was in bankruptcy, another Trial Judge, Judge Vertifeuille, permitted these events to happen while important decisions were pending in the Federal Bankruptcy Court which had a higher jurisdiction.

Judge Vertifeuille ruled against the Petitioner, granting the City's Motion for Foreclosure.

The Petitioner, acting Pro Se, appealed this decision to the Connecticut Appellate Court on the basis that a State case should not move ahead while related matters were pending in the Federal Court.

The Bankruptcy Court stay was lifted on Motion by the Plaintiff.

Judge Vertefeuille granted the City's Motion for lifting the Appellate Court's automatic stay. Petitioner filed motion with the Appellate Court for Review of the Judge's decision.
At the same time, Petitioner filed a motion requesting the Appellate Court to issue an order giving permission to the Petitioner to buy a tape of this hearing transcript inasmuch as the transcript prepared by Court personnel did not conform to the Petitioner's clear memory and her contemporaneous notes. The Court Reporter's office personnel had refused

her request to hear the tape.

The Motion for Review was granted, but the remedy sought was denied. See Appendix.

The motion regarding the purchase of the tape was denied.

Petitioner received notice from the Appellate Court that a hearing would be held to determine whether her appeal was moot and her appeal to be dismissed.

Immediately prior to the hearing Petitioner amended her Preliminary Statement of Issues to include two new Questions: the first regarding the denial of her right to testify, and the second regarding the validity of the "transcript" of the "hearing" of March 25, 1987.

A hearing was held by the Appellate Court on January 5, 1994.

The appeal was dismissed by the Appellate Court without comment or

explanation. Petitioner filed a Petition for Certification to the Supreme Court of Connecticut. The Petition was denied on February 24, 1994. See Appendix.

The Connecticut Supreme Court granted a Motion for Extension of Time to file a Petition for Writ of Certiorari to the United States Supreme Court on April 21, 1994.

The Petitioner's petition for a writ of certiorari was denied.

The City obtained a new law day of March 7, 1995.

On February 17, 1995, the Petitioner filed a federal civil rights action under USC 42 Section 1983.

On the 23 of February 1995, the petitioner filed an application for a temporary injunction against the activation of the law day. In its objection to the petitioner's application, the City misled the Magistrate Judge as to facts

and interpretation of Connecticut Statutes. Pressed by time constraints and relying on the presumed ethicality of opposing counsel, the Magistrate Judge denied the application for a temporary injunction.

Once again the Petitioner filed for bankruptcy, stopping the seizure of her property.

Eventually the automatic stay in Bankruptcy Court was lifted and the City moved again for strict foreclosure. The hearing was set for August 7, 1995.

<u>The hearing of August 7, 1995 is the subject of this petition.</u>

In the morning session of August 7, 1995, at the call of the docket the Petitioner's matter was moved to the afternoon session. Throughout the morning session the judge was businesslike, sharp, alert, and dignified.

After the lunch break, there was a

marked change in the appearance and demeanor of the judge. His face was slightly flushed, his nose red and, in contrast to his very dignified manner of the morning, was initially very jovial. But, as the afternoon progressed he became more and more passive, less attentive, nodding and yawning. Although the Petitioner's matter was scheduled as first case at 2 P.M., her matter was not called until 3:45 P.M..

By this time, the Petitioner had become very ill with chest pains and informed the judge that she was ill and he acknowledged the fact. He proceeded, allowing opposing counsel to speak at great length. When opposing counsel finished, the judge demanded that the Petitioner speak. Even though the Petitioner informed him that she was incapable of proceeding, he prodded her to proceed. Finally, the Petitioner left

the court room to seek medical attention. The judge merely noted for the record that the Petitioner had left and, as the transcript shows, proceeded to judgment against her.

The record also shows that the judge did not consider the Petitioner's written objections. The judge did not file a Memorandum of Decision even though it was required.

The Petitioner did not take an appeal because being pro se, she misread the judge's ruling to mean that he had denied her the right to seek an appeal.

However, one day before the law day of October 3, 1995 and well within the four month period permitted for filing a motion to reopen, the Petitioner moved to reopen. The same trial court judge denied her motion to reopen.

The Petitioner appealed to the Appellate Court and the appeal was dis

missed without comment.

The petitioner moved for Reconsideration and Amplification of the court's decision. Her motion was dismissed as to both counts.

The Petitioner petitioned for review by the Connecticut Supreme Court. Her petition was denied without comment.

The Petitioner moved for an extension of the automatic stay so that she could file a petition for certiorari with the Supreme Court. It was denied without comment.

The Petitioner moved for Reconsideration and Articulation of the court's decision denying her motion for extension of automatic stay. The motion was denied as to reconsideration and dismissed as to articulation without comment.

The Petitioner was unable to raise the federal questions in the trial court

because she was ill.

The Petitioner raised the federal questions in the filing of her appeal in the appeal form section PRELIMINARY STATEMENT OF ISSUES.

The Appellate Court did not comment even when requested to do so. Therefore, there is no record.

The Supreme Court denied the Petitioner's motion for Reconsideration and Articulation of its denial of an extension of time in order to file a petition for a writ of certiorari without comment even though requested to do so. Therefore, there is no record.

REASONS FOR GRANTING THE WRIT

The petitioner prays that the United States Supreme Court under its discretion will grant her petition for a writ of certorari because this matter goes to the heart of what America was intended to be and should always be. This petition is about constitutionally guaranteed procedural due process and how judicial abuse of discretion can deny due process.

Mr. Justice Frankfurter on 161 of Anti-Fascist Committee v. McGrath 341 US 123 quotes Brinkerhoff-Faris v. Hill 281 US 673,681 as follows, "Fairness in procedure is 'due process' in the primary sense" and then continues, "It is ingrained in our national traditions and is designed to maintain them. In a variety of situations the Court has enforced this requirement by checking attempts by executives, legislatures, and lower courts to disregard the deep rooted

demands of fair play enshrined in the Constitution."

In Anti-Fascist Committee v. McGrath at 162, Mr. Justice Frankfurter defines due process as "Expressing as it does in its ultimate analysis respect enforced by law for that feeling of just treatment which has been evolved through centuries of Anglo-American constitutional history and civilization, 'due process' cannot be imprisoned within the treacherous limits of any formula. Representing a profound attitude of fairness between man and man, and more particularly between individual and government, 'due process' is compounded of history, reason, the past course of decisions and stout confidence in the strength of the democratic faith we profess."

Our country came into being in part because of judicial abuses. One of the bills of particulars in our Declaration

of Independence states, "He has made judges dependent on his will alone; for the tenure of their offices and the payment of their salaries." Our founding fathers, having suffered such abuses, ranked the establishment of justice second only to the formation of a more perfect Union in the preamble to our Constitution, and then cemented it into the Constitution in Amendment V.

The petitioner's matter concerns unfairness between an individual and government, and the Connecticut courts aligning themselves with the government by committing and ratifying an awful abuse of discretion visited upon this citizen.

This disillusioned petitioner is forced to conclude that the Connecticut courts disregard due process and justice when it is one of their own who has acted inappropriately. She can only

believe that the Connecticut courts give little if any value to Lord Camden's view of judicial discretion when he warned, "The discretion of a judge is the law of tyrants; it is always unknown; it is different in different men; it is casual and depends on constitution, temper, and passion. In the best it is often times caprice, in the worst, it is every vice, folly and passion to which human nature is liable." Bouvier Law Dictionary "Discretion" 473. Nor do the courts take as counsel, the court's definition of judicial discretion in Chase Parte 43 ALA 303,310 as "a power that may be misdirected by a fit of temporary sickness, an extra mint julep, or the smell or looks of a peculiar overcoat or things more trivial than these, which may imperil the due course of justice in the administration of the law."

To the petitioner, equal treatment

before the bar is a federal right.

Under Rule 10, it appears that this matter may fit into (b) but requires a decision. Inasmuch as no state court has rendered a memorandum of decision or an opinion in this matter, even when requested, it is difficult to show a conflict with another state court of last resort. One can only assume that by its silence, that the Supreme Court of Connecticut has ruled that there was not an abuse of discretion by the trial court.

That cannot be. Delno v. Market St. Ry. Co. 124 F2d, 965,967 defines an abuse of discretion thusly, "Discretion, in this sense, is abused when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable man would take the view adopted by the trail court." Waldrop v. Weaver

702 P2d 1291 at 1293 states, "An abuse of discretion is that which shocks the conscience of the court and appears so unfair and inequitable that a reasonable person could not abide it." These citations are but two of very many that state that when no reasonable person can abide the view taken by the trial court, discretion is abused.

No reasonable person could abide the behavior of the trial judge, either by being a witness to it or by reading the transcript where at the opening of the hearing, the petitioner informed the judge that she was not well. The judge acknowledged that she was not well but continued with the hearing. The petitioner was required to sit through the lengthy presentation of opposing counsel. When the trail judge called on her she immediately told him again of her condition. The next two pages of transcript

show that she told the judge four times that she was ill and unable to defend herself. She finally had to excuse herself. No reasonable person could abide the judge's actions or decisions in this instance.

Because the petitioner was so ill, she could not present her facts in a cogent manner. Intimidated by the court, the petitioner felt impelled to and tried to proceed but could not. In McFarlan v. Fowler Bank City Trust Co. 12 NE 2d 751,755, the court states, "An abuse of discretion is an erroneous conclusion of judgment, one clearly against the logic and the facts and circumstances before the court." Harvey v. State Okla Cr 458 P2d 336,338 states, "Abuse of discretion by trial court is any unreasonable, unconscionable, or arbitrary action taken without consideration of facts and law pertaining to the matter submitted." The

court did not have the facts, but still proceeded to judgment. Surely, such an action by the court was unreasonable, unconscionable, and arbitrary.

The petitioner in her ill and confused state did not specifically request a continuance but surely, the judge on his own initiative should have ordered a continuance for the sake of justice and fairness.

The Supreme Court of Nebraska stated in State v. Schall, 449 NW 2d at 229, "Judicial abuse of discretion results when reasons and rulings of the trial judge are clearly untenable, unfairly depriving a litigant of a substantial right and denying just results in matters submitted for disposition." By using the power of the bench to intimidate this ill petitioner into proceeding until she could no longer, and then proceeding to judgement after the petitioner was forced

to leave the courtroom to seek medical attention, the trial judge did unfairly deprive the petitioner of the substantial right of defending herself under State v. Schall, the trial judge did commit a judicial abuse of discretion.

The trial court abused its discretion on three separate bases: no reasonable person could abide the rulings and actions of the judge; the petitioner's facts were not presented to the court because of her illness; and she was deprived of the substantial right of presenting her facts and defending herself. Through the trail court's abuse of discretion, the petitioner has been denied her right to due process.

WHEREFORE: The Appellate Court of Connecticut having refused to speak to the constitutional issues raised by the petitioner, the petitioner prays that the United States Supreme Court acting

through its authority under United States Code Title 28 section 1257 will grant to the petitioner a writ of certiorari.

THE DEFENDANT/APPELLANT
RONA V. FINIZIE

Rona V. Finizie, Pro Se

RONA V. FINIZIE, PRO SE
2440 North Avenue
Bridgeport, CT 06604
(203) 335-0436

Appendix A.' ORDER OF JUDGE R.J. TOBIN.
DATED AUGUST 7, 1995

DOCKET NO. FBI CV 84 0217953 S

CITY OF BRIDGEPORT v RONA FINIZIE
2440 NORTH AVENUE

DATE: AUGUST 7, 1995. BRIDGEPORT, CONN.
JUDGEMENT OF STRICT FORECLOSURE REOPENED, MODIFIED AND REENTERED.
NEW LAW DAY: OCTOBER 3, 1995, ET SEQ.
FINDING OF FAIR MARKET VALUE: $60,000.00
DEBT: $ 143,661.16 ADDITIONAL ATTORNEY's FEE: $15,843.75. ADDITIONAL APPRAISAL FEE: $350.00.
ALL PRIOR FEES AND EXPENSES ARE REAFFIRMED.
MOTION FOR TERMINATION OF AUTOMATIC STAY OF EXECUTION DATED JULY 25, 1995. ORDERED: THE COURT FINDS THAT ANY APPEAL WOULD BE TAKEN ONLY FOR DELAY AND THE DUE ADMINISTRATION OF JUST-ICE SO REQUIRES, THE STAY OF PROCEEDINGS AS MAY APPLY BASED UPON AN APPEAL BY THE DEFENDANT RONA FINIZIE, IS TERMINATED.
BY THE COURT (TOBIN, J.) DAVID C.BRISTOL, ASST CLERK

APPENDIX B:
MEMORANDUM OF DECISION, STODOLINK, J. DATED MARCH 31, 1993

NO. 217952S
NO. 217953S

SUPERIOR COURT

CITY OF BRIDGEPORT

JUDICIAL DISTRICT OF FAIRFIELD

VS.

RONA FINIZIE, ET AL.

MARCH 31, 1993

MEMORANDUM OF DECISION CONCERNING MOTIONS TO REOPEN JUDGMENT OF FORECLOSURE BY SALE

Both plaintiff and defendant, Rona Finizie, have filed motions to reopen the judgments of foreclosure by sale entered by the court (Melville, J.) on March 15, 1988 ordering a sale in both files on May 21, 1988 which was stayed by the said defendant's Pro Se application for bankruptcy on May 20, 1988.

The said defendant raises a number of reasons for her to be allowed to file four special defenses to all counts in both complaints.

The defendant claims that she never agreed to the entry of the judgements.

This is based on her questioning the 1987 judgments that preceded the judgments to be reopened. The 1987 judgments were reopened at the request of defendant's then attorney. On May 12, 1989, the defendant indicated that there had been no breakdown of communication between her said attorney and her. (Pleading No. 150.) Thus, defendant was aware that new judgments had been entered against her in 1988 and was very knowledgeable of their particulars, since she filed her Pro Se bankruptcy petition one day before the ordered sale, thereby delaying these matters for an additional four years.

She now attempts to attack these judgments by claiming that she did not stipulate to the previous judgments, although her only response to the 1987 judgments was to move to have them reopened in 1988 when she sought more time to sell the subject premises privately.

The bald assertion of the defendant at this late date that she did not stipulate to the previous judgments, without further corroboration, is insufficient to persuade the court that her denial of having stipulated in 1987 is credible. The unquestionable facts that her attorney moved to reopen the 1987 judgment in 1988, and her admission that she had no breakdown of communications with her attorney, together with her bankruptcy petition one day before the 1988 scheduled sale, reaffirm the content of the court files that the judgments were properly entered in 1988.

The defendant questions a jury trial assignment for one of these cases for May 17, 1988, but conveniently neglects to explain that defendant's cross complaint in that file was on the jury list as a result of a motion to separate the cross complaint from the foreclosure.

The court is satisfied, from the examination of the court's files in these cases and the lack of corroboration of defendant's claim that she did not stipulate to the 1987 judgments, that the 1988 judgments were not mistakenly, accidentally or fraudulently entered.

The court will, therefore, deny defendant's request to reopen the judgments entered in 1988. The plaintiff, having been granted a motion to dismiss defendant's bankruptcy petition, has moved to have the stayed 1988 judgments reopened for the purpose of entering new judgments of foreclosure by sale for both premises. Those motions are hereby granted and the plaintiff is directed to claim these matters for hearing on the foreclosure calendar so that the debt may be found, the fair market value of the premises may be determined and the sale date, together with the other usual

orders for a sale, may be set in these files by the judge hearing that calendar.

APPENDIX C./ ORDER OF SUPERIOR COURT
DATED OCTOBER 13, 1995

BRIDGEPORT CITY OF VS
FINIZIE 2440 NORTH CV-84-0217953-S

DATE OCTOBER 12, 1995. BRIDGEPORT, CT
MOTION REQUESTING IMMEDIATE STAY TO RE-
OPEN AND TO REARGUE PREVIOUS ISSUES
SCHEDULES FOR AUGUST 7, 1995 AND TO SET
ASIDE PREVIOUS DECISIONS REGUARDING
STRICT FORECLOSURE AND TERMINATION OF
STAY RENDERED ON AUGUST 7, 1995.
ORDERED MOTION TO REARGUE AND OTHER
REQUESTS FOR RELIEF ARE HEREBY ORDERED
DENIED.

BY THE COURT (TOBIN, J.)
DAVID C BRISTOL, ASST. CLERK

SUPERIOR COURT
1061 MAIN STREET
P. O. BOX 110
BRIDGEPORT, CONNECTICUT
06601

RONA V. FINIZIE
2440 NORTH AVENUE
BRIDGEPORT, CT 06604

DATED OCTOBER 13, 1995
FBT

APPENDIX D

ORDER OF SUPERIOR COURT
DATED OCTOBER 13, 1995

BRIDGEPORT CITY OF VS.
FINIZIE 2428 NORTH CV-84-0217952-S

DATE OCTOBER 12, 1995. BRIDGEPORT, CT
MOTION REQUESTING IMMEDIATE STAY TO REOPEN AND TO REARGUE PREVIOUS ISSUE SCHEDULED FOR AUGUST 7, 1995 AND TO SET ASIDE PREVIOUS DECISIONS REGUARDING STRICT FORECLOSURE AND TERMINATION OF STAY RENDERED ON AUGUST 7, 1995 BY JUDGE R. J.TOBIN, DATED OCTOBER 2, 1995. ORDERED MOTION TO REARGUE AND OTHER RELIEF ARE HEREBY ORDERED DENIED.

BY THE COURT (TOBIN, J.)
DAVID C. BRISTOL , ASST. CLERK

SUPERIOR COURT
1061 MAIN STREET
P. O. BOX 110
BRIDGEPORT, CT 06601

RONA V. FINIZIE
2440 NORTH AVENUE
BRIDGEPORT, CT 06604

DATE OCT 13, 1995
FBT

APPENDIX E. ORDER OF THE APPELLATE COURT
Dated January 31, 1996

AC 15371

CITY OF BRIDGEPORT : APPELLATE COURT

V : STATE OF CONNECTICUT

RONA FINIZIE ET AL : JANUARY 31,1996

O R D E R

THE MOTION OF THE PLAINTIFF, FILED NOVEMBER 13, 1995, TO DISMISS THE APPEAL OF THE NAMED DEFENDANT, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY

O R D E R E D GRANTED.

BY THE COURT

/s/Cynthia M. Gworek
ASSISTANT CLERK
APPELLATE

NOTICE SENT: January 31, 1996

Gordon & Scalo
Rona V. Finizie, pro se
Alan B. Fodeman
Bernard Green
Nathanson & Cipriano
Claydon & Lawler
Gager & Henry
Weber, Neville & Shaver
Miller & Rosnick
Hon. Richard J. Tobin
Fairfield J.D., (CV84-0217952S),
(CV84-0217953S)

APPENDIX F. ORDER OF THE APPELLATE COURT
DATED MARCH 13, 1996

NO. AC 15371

CITY OF BRIDGEPORT : APPELLATE COURT

V : STATE OF CONNECTICUT

RONA FINIZIE ET AL : MARCH 13, 1996

O R D E R

THE MOTION OF THE DEFENDANT, FILED FEBRAUARY 21, 1996, FOR RECONSIDERATION AND AMPLIFICATION, HAVING BEEN PRESENTED TO THE COURT, TI IS HEREBY

O R D E R E D DENIED

BY THE COURT,

/S/Cynthia M. Gworek
ASSISTANT CLERK- APPELLATE

NOTE SENT:3/13/96
GORDEN & SCALO
RONA V. FINIZIE, PRO SE
ALAN B. FODEMAN
BERNARD GREEN
NATHANSON & CIPRIANO
CLAYDON & LAWLER
GAGER & HENRY
WEBER, NEVILLE & SHAVER
MILLER, ROSNICK & D'AMICO, P.C.
HON. RICHARD J TOBIN
FAIRFIELD J. D., (CV84-217952S), (CV84-217953S)

APPENDIX G. / ORDER OF SUPREME COURT
DATED MAY 2, 1996

SUPREME COURT
STATE OF CONNECTICUT

NO. PSC-95-0299

City of Bridgeport

v.

Rona V. Finizie et al.

ORDER ON PETION FOR CERTIFICATION
TO APPEAL

On consideration of the petition by the named defendant for certification to appeal from the Appellate Court (AC 15371), it is hereby ordered that said petition be, and the same is hereby denied.

BY THE COURT,

/S/Alan M Gannuscio
ASSISTANT CLERK-APPELLATE

Dated: May 2, 1996
Notice sent: 5/2/96
Clerk Superior Court, Fairfield 0217952S
Clerk, Appellate Court 0217953S
Reporter of Judicial Decisions
SAO
Rona V. Finie, pro se
Gordon & Scalo
Weber, Neville & Shaver
Gager & Peterson
Miller, Rosnick & D'Amico,
Alan B. Fodeman
Bernard Green
Nathanson & Cipriano
Claydon & Lawler

Rona V. Finizie, pro se, in support of petition

APPENDIX H.' ORDER OF SUPREME COURT
DATE JUNE 5, 1996

NO. A.C. 15371

CITY OF BRIDGEPORT :APPELLATE COURT

V : STATE OF CONNECTICUT

RONA V. FINIZIE ET AL : JUNE 5, 1996

O R D E R

THE MOTION OF THE DEFENDANT, FILED MAY 13, 1996, FOR STAY, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY

O R D E R E D DEENIED

BY THE COURT,

/S/Cynthia M. Gworek
ASSISTANT CLERK-APPELLATE

NOTICE SENT: 6/6/96
RONA V. FINIZIE, PRO SE
GORDON & SCALO
ALN B. FODEMAN
BERNARD GREEN
CLAYDON & LAWLOR
WEBER, NEVILLE & SHAVER
NATHANSON & CIPRIAN
GAGER & PETERSON
MILLER, ROSNICK & D'AMICO, P.C.
HON. RICHARD J. TOBIN
FAIRFIELD J.D., (CV84-0217952S)
(CV84-0217953S)

APPEN. H: MAY 27, 1986 APPELLATE DECISION

APPELLATE COURT

STATE OF CONNECTICUT

7 CONN. APP. 522

MAY 27, 1986

JOHN M. CLAYDON, JR., ADMINISTRATOR (ESTATE OF ANN V. FINIZIE) v. RONA V. FINIZIE ET AL.

DUPONT, C.J., HULL and BORDEN, Js.

The plaintiff administrator of the estate of A filed an action in the Superior Court seeking a partition and sale of certain real property owned by A and her three defendant children as tenants in common. From the trial court's judgment ordering the partition of the property by sale, the named defendant appealed to this court. HELD that since the statutes (§§ 52-495 and 52-500), pursuant to which the plaintiff brought the

action here, authorize such actions by " any person interested" in the subject property, and since a fiduciary, who, like the plaintiff, does not claim that the proceeds from the sale are needed to satisfy the debts of the estate, is not a person with an interest in the property, the plaintiff lacked standing to bring the action.

Argued April 10-- decision released May 27, 1986.

Claydon v. Finizie

Action for the partition and sale of certain real estate located in the City of Bridgeport, brought to the Superior Court in the judicial district of Fairfield and tried to the court, STODOLINK, J.; judgment ordering a partition by sale, from which the named defendant appealed to this court. ERROR; JUDGMENT DIRECTED.

LAWRENCE V. PARNOFF, for the appellant (named defendant).

AMY E. TODISCO, for the appellee (plaintiff).

HULL, J. The named defendant, Rona Finizie, her two brothers, the defendants Lionel T. and Edmond J. Finizie, and their decedent mother, whose estate is being admistered by the plaintiff,[1]

Action for the partition and sale of certain real estate located in the City of Bridgeport, brought to the Superior Court in the judicial district of Fairfield and tried to the court, STODOLINK, J.; judgment ordering a partition by sale, from which the named defendant appealed to this court. ERROR; JUDGMENT DIRECTED.

LAWRENCE V. PARNOFF, for the appellant (named defendant).

AMY E. Todisco, for the appellee (plaintiff).

HULL, J. The named defendant, Rona Finizie, her two brothers, the defendants Lionel T. and Edmond J. Finizie and their decedent mother, whose estate is being admistered by the plaintiff,[1]

action. She also alleged essentially in two other special defenses that her two brothers held only naked record title to a one-quarter interest, each having made no payments in connection with the purchase and operations of the property. She asserted that, as a result, the property was equitably owned one-half by her and one-half by Ann's Estate.

The court, on May 2, 1985, rendered judgment ordering partition by sale. The trial coourt, in that judgment, declared the ownership interests to be as alleged in the plaintiff's complaint and stated flatly that "a sale will better promote the interest of the parties".[2]

2 The court did not file a memorandum of decision elaborating on this barebones statement in the judgment, nor was articulation sought by the defendants.

Only Rona appeals, raising the following two issues: (1) whether the trial court acted prematurely in hearing the matter and rendering judgment in light of her pending claim against the estate: and (2) whether the court erred in undly restricting the admission of evidence she offered to support her claim of a one-half equitable interest in the property. Because we decide, sua sponte, that the complaint should have been dismissed for lack of subject matter jurisdiction, we do not consider these claims of error.[3]

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3 The issue we consider was not raised below nor briefed nor argued by the parties in this court. We therefore decide only such issues as are necessarily involved in the conclusion which we have reached.

Although the complaint does not so state, it is apparent that the plaintiff sought a partition of the realestate under General Statutes §152-495[4] and a sale under General Statutes §52-500.[5] Both statutes confer jurisdiction on the Superior Court " upon the complaint of any person interested." It has long been well settled law that an administrator does not have title to real property but that title passes to the heirs subject to the right of administration. BRILL v. ULREY, 159 Conn. 371,375,269,A.2d262(1970);

4 General Statutes §52-495 provides in pertinent part: "Courts having jurisdiction of actions for equitable relief may, upon the complaint of any person interested, order partition of any real property held in tenancy in common..."

5 General Statutes §52-500 provides in pertinent part:"(a) Any court of equitable jurisdiction may, upon the complaint of any person interested, order the sale of any property, real or personal, owned by two or more persons, when, in the opinion of the court, a sale will better promote the interests of the owners."

O'CONNOR v.CHIASCIONE, 130Conn. 304 306-308, 33A.2d 336 (1943); BOWEN v. MORGILLO, 127 Conn. 161, 168,14A.2d 724 (1940). The rule applies whether the fiduciary is an executor or administrator. PIGEON v. HATHWAY 156 Conn. 175, 177 239 A2.d 523 (1968).

The precise question of whether an administrator, alleging nothing more than tenancy in common, is a "person interested" under either of these two statutes is a case of first impression. The case of BRILL v ULREY, supra, is, however, clear authority for the proposition that such a claim must fail for lack of subject matter jurisdiction. The issure in BRILL was whether an executor could institute and maintain an action to quiet title to real estate

where there was no allegation that the property involved was needed to satisfy claims against the estate. General Statutes § 47-31 provides that an action to quiet title may only be brought by a "person claiming title to, or any interest in, real or personal property." The defendants asserted that the plaintiff had no such interest. In responding to that claim, the Supreme Court stated: "We have permitted the representative of the estate of a deceased person to maintain an action to quiet title under three separate circumstances. In MUNGER v. DOOLAN, 75 Conn. 656,662,55A.169 (1903), we held that an administrator has sufficient interest in the realty to bring an action to quiet title if the property is

needed to satisfy a claim against the estate. In MINERV. MINER, 137 Conn.642, 646-47, 80 A.2s 512 (1951), the decedent himself had instituted an action to quiet title prior to his death, and we permitted his administrator c.t.a. to prosecute the case to judgment under authority of what is now General Statutes §52-599. And most recently, in PIGEON V. HATHEWAY, 156 Conn. 175, 176-77,239 A.2d 523(1968), we allowed an executor to institute a suit under the theory that the cause of action was actually one to quiet title of personalty under the doctrine of equitable conversion, since the validity of an option to purchase real estate was being tested.

"Where, however, an executor seeks to institute and maintain an action to quiet title to real property without alleging and proving that the property is needed to

settle claims against the estate, we do not think that the statutory requirement of interest in the property is sufficiently met....

"The (O"CONNOR v. CHIASCIONE, supra, 306-308,) decision makes it clear that the power of 'possession, care and control' granted to an executor under General Statutes 45-252 over real 3state during the settlement of an estate is given only to protect the rights of creditors. See also HARDY v. SCOTT, 127 Conn. 722, 723, 19 A.2d 420 (1941). The executor's power is in derogation of rights of their heirs, and since it is so limited in purpose, it is properly exercised only when the exigencies of the estate so require. Where, as in the instant case, no

allegation is made that the property is needed to meet claims against the estate, there can be no occasion to permit the exercise of the executor's power. The court below committed error, therefore, when it rendered a judgment partially in favor of the executors, who did not have a cause of action. "BRILL V. ULREY, supra, 374076.

Absent a showing in this case by the plaintiff that he brought himself as administrator within some recognized or recognizable principle giving him a sufficient interest in the real estate to request its partition, he lacked standing to bring this action. "Standing is a matter of subject jurisdiction which cannot be conferred by the parties. "HOUSING AUTHORITY V. LOCAL 1161, 1 Conn. App. 154,157, 468 A.2d 1251, cert. denied,

192 Conn. 802,471, A.2d 244 (1984). The Superior Court, therefore, lacked jurisdiction over the plaintiffs complaint.

We note, for clarity, that the plaintiff could have, but did not, bring a complaint for partition or sale by direct petition to the Probate Court under the provisions of General Statutes 45-257a. Under that statute, both partition and sale are authorized in language substantially similar to that of General Statutes 52-495 and 52-500. We need not decide whether there is a requirement procedure.[6]

6 We do not reach the question of whether this statute should be construed as vesting exclusive control of such proceedings in the Probate Court or as merely creating jurisdiction concurrent with that ofthe Superior Court. The preeminent authority on Connecticut probate practice, however, concludes as follows: "The partition, or sale in lieu of partition, of real estate owed in part by a deceased person may

may furnish another example of concurrent jurisdiction. At one time, it was considered that the Superior Courtcould order the sale of the realestate of a deceased person before the final settlement of his estate where a partition between the joint devisees was not feasible. This, however, was because the statute at that time did not empower the Probate Court to order the sale of realestste to facilitate distribution. Under the present statutes, which empower the Probate Court to authorize a sale whenever it shall find that to grant such authority would be for the best interests of the parties in interest and which prohibit a Superior Court partition of any property belonging wholly to an estate in settlement in the Probate Court before it is ready for distribution, a/ case could hardly arise where the Probate and Superior Courts would have concurrent jurisdiction with reference to the sale or partition of property wholly owned by an estate. However, in the case of property partially owned by an estate, it would seem that both the Probate Court, within specified limits, and the Superior Court could order partition or sale in lieu of partition." (Footnotes omitted.) 1 Locke & Kohn, Connecticut Probate Practice 75. For a discussion of exclusive and concurrent jurisdiction in the Probate Court and the Superior Court. See HALL v. DICHELLO DISTRIBUTORS, INC., 6 Conn.App. 530,534-36, A.2d (1986).

There is error, the judgment is set aside and the case is remanded with direction to dismiss the complaint for lack of subject matter jurisdiction.

In this opinion the other judges concurred.

APPENDIX I. ORDER OF SUPREME COURT
DATED JULY 17, 1996

NO. AC 15371

CITY OF BRIDGEPORT : APPELLATE COURT

V : STATE OF CONNECTICUT

RONAL V. FINIZIE ET AL : JULY 17, 1996

O R D E R

THE MOTION OF THE DEFENDANT, FILED JUNE 17, 1996, FOR RECONSIDERATION AND ARTICULATION

HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY

O R D E R E D DENIED AS TO RECONSIDERATION: DISMISSED AS TO ARTICULATION.

BY THE COURT,

/S/ Cynthia Gworek
ASSISTANT CLERK-APPELLATE

NOTICE SENT: 7/17/96
GORDON & SCALO
RONA V. FINIZIE, PRO SE
ALAN B. FODEMAN
BERNARD GREEN
NATHANSON & CIPRIANO
GAGER & HENRY
WEBER, NEVILLE & SHAVER
MILLER, ROSNICK & D'AMICO
CLERK, FAIRFIELD J.D. 0217952S; 0217953S
HON. RICHARD J. TOBIN